Sulaiman Khan died on 20th April 1959 possessed of five pieces of land and a dwelling house and leaving him surviving four children aged 23, 21, 19 and 18. None of them applied for administration. On 22nd November 1960 AR.S. Nachiappa Chettiar, who said that he had on 18th May 1951 lent the deceased $7,600, applied for administration. On 23rd February 1961 when the application came up for hearing, none of the deceased's children all of whom had been served was present and the court granted administration to the applicant as creditor.

On 17th December 1962 Arunasalam Chettiar as attorney for the administrator applied in Originating Summons No. 316 of 1962 for leave to sell the deceased's estate (saying that the deceased then owed the administrator principal as well as interest $33,780), the proceeds to be applied to pay off the deceased's debt to the administrator, to meet the expenses of taking out letters of administration, the sale and the payment of estate duty. The declared value of the estate is only $14,600 and if the administrator were entitled to recover his debt including interest there would be nothing left for any of the deceased's children. Accordingly they were galvanised into opposing the application and on 8th June 1963 moved that the applicant's appointment as administrator be revoked and that they should be appointed administrators instead.

They do not say that the administrator has in any way been guilty of any act of maladministration. They only say that (1) that the alleged debt of $33,780 includes a claim for recovery of principal and interest which *prima facie* is statute-barred (2) if the administrator were granted leave to sell the estate and pay himself out of the proceeds he would be able to circumvent the law of limitation and (3) the proper course for the administrator is to sue for the debt and as he cannot sue himself his appointment as administrator should be revoked.

Section 34 of the Probate and Administration Ordinance No. 35 of 1959 says that I may revoke the administrator's appointment "for any sufficient cause." This is nowhere defined or explained by the Ordinance but Jeune P. says in *In the Goods of William Loveday*(1) at page 156.

> "After all, the real object which the Court must always bear in view is the due and proper administration of the estate and the interests of the parties beneficially entitled thereto....."

So what I have to consider here is whether the due and proper administration of the estate and the interests of the deceased's children require that the administrator's grant be revoked.

I do not think so.

There is no allegation as already said that the administrator has in any way been guilty of maladministration.

There is nothing in the point made by Inche Chang Min Tat that the administrator appears to be a professional moneylender. At the time of the loan (18th May 1951) the Moneylenders Ordinance No. 42 of 1951 had not been enacted and the only restrictions imposed on the rights of moneylenders in the State were those in section 85 of the Kedah Civil Procedure Code. Even these were repealed by 1950 Supreme Court Rule No. 3 on 1st September 1951, *vide* Federal Legal Notification No. 340 of 1950.

As regards limitation, assuming that it applies, my refusal to revoke the administrator's appointment need not affect the children's interests in any way, for if the estate is insolvent (as appears to be the case) then by part I of the First Schedule to the Probate and Administration Ordinance 35 of 1959 after payment of the funeral, testamentary and administration expenses, "the same rules shall prevail and be observed as to....debts and liabilities provable [against the estate]....as may be in force for the time being under the law of bankruptcy with respect to the assets of persons adjudged bankrupt." And it would appear from *Halsbury's Laws of England,* 3rd edition, volume 2, para 924 that the statute-barred debt is not provable against a bankrupt and from *Cotterell* v. *Price & Others*(2) that this is so even in the case of a secured debt.

Accordingly I dismiss this Motion, the taxed costs of the parties on a solicitor and client basis to be paid out of the estate. In the result, the administrator's application in Originating Summons No. 316 of 1962 will be brought up for consideration on a date to be fixed by the Assistant Registrar.

Motion dismissed.

Solicitors:—*Jayadeva & Zahir; Chang Min Tat.*

HERON, GETHIN-JONES & LIOW v. JOHN CHONG

[C.A. (Wee Chong Jin C.J., Tan Ah Tah and Buttrose JJ.) July 23, 1963]

[Singapore — Civil Appeal No. 7 of 1963]

Master and servant—Contract of service—Construction of terms of contract—Whether payment in lieu of notice implied—Plaintiff claiming for breach of contract —No alternative claim for liquidated damages—Whether omission of such a plea fatal.

This was an appeal against a successful claim by the respondent for liquidated damages for breach of

contract of service. The appellants contended that on the true construction of the contract of service which was contained in a letter of the July 20, 1961 and which read "Termination of employment." This is to be by either party by three months' notice in writing to the other, provided always that in the event of professional misconduct we may forthwith terminate your employment without any notice or payment in lieu of notice" the plaintiff was not entitled to liquidated damages.

Held: (1) the words "without any notice or payment in lieu of notice" are surplusage and in the events that had happened a term for payment of salary in lieu of notice cannot be implied;

(2) although the respondent had been summarily dismissed unjustifiably, as the respondent relied solely on the contract and had not pleaded an alternative claim for damages for wrongful dismissal, he was not entitled to judgment on his claim founded on a wrong construction of the contract. Further there being no evidence that he had placed his services on the market and had failed to obtain any suitable employment the respondent would have at most been entitled to nominal damages had it not been for the fact that he was paid his salary up to March 31, 1962.

Decision of Winslow J. (*ante* p.113) reversed.

Cases referred to:—

(1) *Reigate* v. *Union Manufacturing Co.* [1918] 1 K.B. 592.

(2) *Baker* v. *The Denkera Ashanti Mining Corp. Ltd.* 20 T.L.R. 37.

(3) *Adami* v. *Maison de Luxe Limited* 35 C.L.R. 143.

(4) *Hochester* v. *De la Tour* 118 E.R. 922.

(5) *Turner* v. *Mason* (1845) 14 M. & W. 112.

COURT OF APPEAL.

K. E. Hilborne for the appellants.

J. E. Lloyd for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J.: This is an appeal from the judgment of Winslow J. in favour of the plaintiff in a claim for liquidated damages for breach of a contract of service.

The plaintiff, a doctor, was engaged by the defendants for a period of one year from 1st August 1961, the contract of service being contained in a letter from the defendants to the plaintiff in the following terms:—

July 20, 1961.

"Dear Dr. Chong,

This is to confirm your appointment as Assistant in this practice for one year as from August 1, 1961, on the following terms:—

1. Salary: $1,750 per month.
   Car allowance: $250 per month.

2. Termination of employment. This is to be by either party by three months' notice in writing to the other, provided always that in the event of professional misconduct we may forthwith terminate your employment without any notice or payment in lieu of notice.

Yours faithfully,
Signed:—
for Heron & Gethin-Jones."

On the 15th March 1962 he received a letter from the defendants dated 9th March 1962 to the effect that his services, owing to the uncertainty of future medical practice, would be terminated three months from the 15th March 1962. He wrote in reply a letter ante-dated to 10th March 1962 acknowledging the defendants' letter and informing them that he would be taking the two weeks annual leave due to him as from 19th March 1962 in order to present himself as an applicant for two vacancies advertised in the Federation of Malaya. This reply was delivered on the 17th March, a Saturday. The same day he saw one of the partners in connection with the leave he wished to take and was referred to another partner, Dr. Heron whom he eventually saw about 1 p.m. that day.

What transpired at that interview with Dr. Heron was disputed at the trial but the learned judge accepted the plaintiff's account of it that Dr. Heron told him to clear out and never to come back when he insisted on taking his leave beginning from the following Monday i.e. 19th March. It was not in dispute that at the end of this interview Dr. Heron instructed an employee to requisition the medical bag allocated by the defendants for the plaintiff's use and to place it in Dr. Heron's office when normally the plaintiff would have been allowed to take it home for outdoor visits over the weekend.

The next day i.e. 18th March the defendants arranged for another doctor to replace the plaintiff on the 19th March and the replacement duly reported for work on the morning of the 19th March. Also on the 18th a letter bearing that date but posted by registered post on the 19th was written by the defendants to the plaintiff informing him that if he failed to carry out his duties from the 19th onwards they would "treat such failure as a most serious breach of contract." That letter obviously could not reach the plaintiff in time for him to realise that, if the defendants meant what they said in that letter, the defendants considered him to be still in their employ up to the 19th March and that his future with them depended upon whether he turned up for work on the 19th or not. In fact the letter reached him on the 22nd March.

Meanwhile according to the plaintiff he decided to put off going to the Federation of Malaya owing to the turn of events and to report for work in the normal way on the 19th March.

Accordingly on the morning of the 19th a Monday at 8.30 a.m. he telephoned the welfare officer of the Singapore Harbour Board and asked if there was a doctor at the Singapore Harbour Board clinic where on Monday mornings he would normally go to attend to patients of the

defendants. The welfare officer informed him that a Dr. Liow Yew Lee, a brother of a partner of the defendants, was there. The plaintiff thereupon went to the Raffles Place clinic of the defendants and asked for his medical bag but was told by the employees there, none of the partners of the defendants being there, that the bag had to remain in Dr. Heron's room. He thereupon removed his personal belongings from that clinic.

On the 22nd March, the plaintiff, having just that morning received the registered letter addressed to him by the defendants and dated 18th March, went with his wife and saw one of the partners, Dr. Liow Yew Chye and, not unnaturally, told Dr. Liow the letter of 18th March which he had just received was an unfair letter and asked to be taken back into the defendants' service. According to the plaintiff Dr. Liow told him he had dismissed himself.

On the 23rd March the name plate of the plaintiff was removed from the board listing the names of doctors attached to the defendants' practice.

The learned trial judge found that the defendants had summarily dismissed the plaintiff on the 17th March 1962 and that the dismissal was wrongful and held that the plaintiff was entitled under the contract to three months salary as liquidated damages for such wrongful dismissal.

The first question in this appeal turns upon the construction of the letter of appointment. The question is whether or not by this letter the plaintiff is entitled to three months salary in lieu of three months notice if the contract of service is terminated by the defendants in circumstances which does not give rise to the right of summary dismissal.

Counsel for the defendants contends that the plaintiff is not so entitled. His argument, as I understand it, is that the words "provided always that in the event of professional misconduct we may forthwith terminate your employment without any notice or payment in lieu of notice" in clause 2 of the letter of appointment are redundant or mere surplusage as these words merely state the common law which gave a master the right to dismiss summarily his servant for misconduct so that the only contractual term as regards termination of employment is that either party may terminate the contract by giving three months' notice in writing to the other. He further argues that it would not be permissible to imply the words "or payment in lieu of notice" before the proviso in clause 2 unless it were necessary in the business sense to give efficacy to this contract and clearly, according to counsel, it was not necessary in the case of this particular contract of service. He relies on *Reigate* v. *Union Manufacturing Co.*[1] where Scrutton L.J. at page 605 said:

> "These principles, however, have been clearly established: The first thing is to see what the parties have expressed in the contract; and then an implied term is not to be added because the court thinks it would have been reasonable to have inserted it in the contract. A term can only be implied if it is necessary in the business sense to give efficacy to the contract; that is, if it is such a term that it can confidently be said that if at the time the contract was being negotiated some one had said to the parties, "What will happen in such a case," they could have both replied, "Of course, so and so will happen; we did not trouble to say that; it is too clear." Unless the court comes to some such conclusion as that, it ought not to imply a term which the parties themselves have not expressed."

On the other hand counsel for the plaintiff contends that he is so entitled as the contract properly construed stipulated either expressly or implied by for payment, of three months' salary in lieu of three months' notice. His argument, as I understand it, is that reading clause 2 of the letter of the 20th July 1961 as a whole and applying a rule of construction applicable to all written instruments "that the instrument must be construed as a whole in order to ascertain the true meaning of its several clauses, and the words of such clause must be so interpreted as to bring them into harmony with the other provisions of the instrument, if that does no violence to the meaning of which they are naturally susceptible." (see 11 *Halsbury's Laws of England* 3rd Edition paragraph 638 page 389), the words "or payment in lieu of notice" should be implied after the words "in writing to the other" in line 3 thereof. The effect of his contention is that clause 2 should be read as follows:—

> "2. Termination of employment. This is to be by either party by three months' notice in writing to the other or payment in lieu of notice, provided always that in the event of professional misconduct we may forthwith terminate your employment without any notice or payment in lieu of notice."

Assuming clause 2 should be so read it would, in my opinion, be necessary to further read the words "payment in lieu of notice" as meaning "payment of three months' salary in lieu of such notice" so as to enable counsel for the plaintiff to bring his case on all fours with *Baker* v. *The Denkera Ashanti Mining Corp. Ltd.*[2] on which he relies. In *Baker's Case* the contract provided for the master to be at liberty to terminate the agreement at any time by giving to the servant two months notice in writing or two months salary in lieu of such notice.

It seems to me, reading clause 2 as a whole, that it provides for either party to be at liberty to determine the contract by giving to the other

three months' notice in writing and further provides that the defendants may forthwith terminate the employment of the plaintiff if he commits professional misconduct.

This being, in my view, what clause 2 provides, there is no necessity to resort to any implied term such as "payment of three months' salary in lieu of the three months' notice" to give this clause business efficacy nor, to put it in another way, could it be said that if the parties had been asked "Could either of you instead of giving three months' notice pay three months' salary or the equivalent of three months' salary to terminate the contract," would both have replied "Of course that is so; we did not trouble to say that; it is too clear."

In my view the words "without any notice or payment in lieu of notice" at the end of clause 2 are mere surplusage and the rule of construction set out in the passage in Halsbury's Laws of England cannot be invoked to enable the plaintiff, in the events that have happened, to successfully contend that by reason of their presence in clause 2 there is an implied term providing for payment of salary in lieu of notice.

The next question raised by the defendants is that the learned trial judge should have found on the evidence that the plaintiff was not dismissed on the 17th of March but on the 19th March. This question can be briefly disposed of. First, it was not put forward as a ground of appeal and in any event the learned trial judge having accepted the plaintiff's account of what took place at the interview with Dr. Heron at 1.00 p.m. on Saturday 17th March he was in my opinion entitled to come to the conclusion that the defendants in fact dismissed the plaintiff on the 17th March 1962, a conclusion with which I entirely agree.

The third question then in this appeal is whether the defendants were justified in summarily dismissing the plaintiff on the 17th March, 1962. The defendants rely on the case of *Adami* v. *Maison de Luxe Limited*[3]. In that case the respondent company, the proprietors of a hall used for dances and other entertainments, employed the appellant as its hall manager for the term of three years from the opening of business at the hall. By the agreement between the parties it was agreed that the appellant should have the general supervision of the business carried on by the company in connection with any hall of which the company may be the owner or lessee subject always to the board of directors of the company. Shortly after business at the hall had begun the board of directors of the company resolved to hold dances in the hall on Saturday afternoons from 2.30 p.m. to 5 p.m. and instructed the appellant to be on duty at the hall during those hours. The appellant did not attend the hall on any Saturday afternoon, he being a bookmaker and interested in a business which required his attention on Saturday afternoons. The company accordingly terminated his employment and he thereupon brought an action for wrongful dismissal in breach of the agreement. The defence was that the dismissal was for a just cause. The High Court of Australia on appeal held that the refusal of the plaintiff to attend the hall on Saturday afternoons amounted to a distinct refusal by him to be bound by the term of his contract of service and his failure to obey instructions was such as to go to the foundation and root of the whole contract between the parties.

The present case however is different. On the facts as found by the learned trial judge, all that the plaintiff did on the Saturday afternoon was to insist on taking his fortnight's leave (it not being in dispute that he was entitled to have a fortnight's leave during his term of service) beginning from the following Monday. In my view this could at most amount to an intention to exercise rights under the contract and not an intention to break or renounce the contract and could not be said to amount to a distinct refusal to be bound by the terms of his contract such as to go to the foundation and root of the whole contract. In any event, on the facts as found by the learned trial judge of what the plaintiff did subsequently on the following Monday morning, it turned out to be an intention which the plaintiff never carried into effect. In my opinion the defendants were not entitled to treat the plaintiff as having renounced the contract thereby entitling them to terminate his services summarily until he had in fact failed to report for duty on the following Monday morning.

The case of *Hochester* v. *De la Tour*[4] is distinguishable because in that case it was an executory agreement and on the facts it was held that there was on the part of the defendant, not merely an intention to break the contract, of which intention he might repent, but a renunciation communicated to the plaintiff on which the plaintiff was entitled to act. In that case the declaration of intention not to perform the agreement was made by the defendant before the day for the commencement of his employment. Another case relied on by the defendants is *Turner* v. *Mason*[5] but in that case the servant, a housemaid, having been refused leave to stay away from the employer's house overnight did stay away overnight in defiance of her employer.

The final question then remains the plaintiff having in my view been summarily dismissed on the 17th March 1962, such summary dismissal

being unjustified, there being no term in the contract that under such circumstances the plaintiff was entitled to payment of three months' salary as liquidated damages, what order should be made.

It is clear from the pleadings that the plaintiff's claim is based on his view that he is entitled to sue under the contract for three months' salary in lieu of notice commencing from the 18th March 1962. It is also clear from the pleadings that the defendants defended the action on the basis of that claim. In my view the plaintiff having relied solely on the contract and not put in an alternative claim for damages for wrongful dismissal he is not entitled to judgment on his claim having framed it on a wrong construction of the contract. In any event there being no evidence on his part that he had placed his services on the market and had failed to obtain any suitable employment, the plaintiff would at most have been entitled to nominal damages had it not been for the fact that he was paid his salary up to the 31st March, 1962.

For all these reasons therefore I would allow the defendants' appeal against the judgment in favour of the plaintiff on his claim and would uphold the judgment dismissing the defendants' counterclaim against the plaintiff.

Tan Ah Tah and **Buttrose JJ.** concurred.

Appeal allowed.

Solicitors:—*Hilborne & Chung; Drew & Napier.*

LIM CHIN HUAT v. REGINA

[A.Cr.J. (Buttrose J.) July 26, 1963]

[Singapore — Magistrate's Appeal No. 7 of 1963]

Criminal Law — Penal Code, s.420 — Cheating by tendering cheque—Cheque drawn by a third party and not by accused—Cheque subsequently dishonoured—Onus on prosecution to prove that accused knew that it would be dishonoured—Evidence of third party—Whether accomplice evidence.

For a conviction on a charge of cheating to be sustained in the case of the dishonour of a cash cheque tendered to the accused from a third party the prosecution must show that from the circumstances of the case it can be presumed that the accused was aware that the cheque would be dishonoured. In this case the conviction should be sustained because such evidence was supplied by the third party (the drawer of the cheque). However the third party was not an accomplice because he had no knowledge of the transaction between the accused and the complainant.

Case referred to:—

(1) *Tan Yook Suan* v. *R.* [1954] M.L.J. 116.

MAGISTRATE'S CRIMINAL APPEAL.

David Marshall for the appellant.

Francis T. Seow (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Buttrose J.: This is an appeal against a conviction for cheating. The charge against the appellant was as follows:—

"That you, on or about the 14th day of August 1962 at about 4.45 p.m. at No. 1 Brighton Crescent, Singapore, cheated one Low Chuck Song by deceiving him into believing that a Malayan Banking Limited cheque No. SB/RI 023085 for $6,750 tendered by you in payment for 45 sets of Philips Tape Recorders would be honoured and in so doing dishonestly induced the said Low Chuck Song to deliver to you 45 sets of Philips Tape Recorders valued at $6,750 which he would not have done had he not been so deceived and you have thereby committed an offence punishable under Section 420 of the Penal Code.

The prosecution case was, in substance, that this was a cash transaction for the sale of 45 sets of Philips tape recorders by Allied Radio Corporation, of which the complainant was the managing directors, to the appellant. The tape recorders were ordered by the appellant on the morning of the 14th August, 1962, and delivered that same afternoon between 4 and 5 o'clock.

A cash cheque for the sum of $6,750 also dated 14th August, 1962 was handed over by the appellant to the complainant immediately after the goods had been delivered. The cheque was drawn by a third party and the complainant at first refused to accept it because it was not drawn by the appellant. On receiving an assurance from the appellant, backed up by other statements, that the cheque would be honoured the complainant accepted it. On the following morning the 15th August, 1962, the cheque was presented to the Bank and dishonoured and returned to the complainant.

Now it cannot, I think, be disputed that if a person gives a cheque in payment for goods and it is dishonoured and from the circumstances it can be presumed that he must have been aware that the cheque would be dishonoured, so that the failure to meet payment of the cheque was not accidental, he is guilty of cheating under section 420 of the Penal Code.

What then was the evidence from which it could be presumed that the appellant must have known that the cheque would be dishonoured. It was supplied in the clearest possible terms by the evidence of Tan Ngi Ker. It is I think both appropriate and convenient to set out what the learned Magistrate had to say about this evidence.

"The missing link in the Prosecution's case was supplied by the evidence of one Tan Ngi Ker (PW4). He was approached by the Appellant to do business of importing Hong Kong goods. On 31st July, 1962 Tan